STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BRODY TREMAIN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEVEN TREMAIN,

Respondent-Appellant,

and

JENNY TREMAIN,

Respondent.

UNPUBLISHED
February 17, 2004

No. 250115
Dickinson Circuit Court
Family Division
LC No. 02-000504-NA

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the child's best interests. *Trejo, supra* at 356-357.

After reviewing the record brought before us for review, we are satisfied that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In the instant case, testimony and evidence presented at trial established that when authorities removed Brody from respondent-appellant's custody and care, he maintained an unsanitary, unsafe and utterly unacceptable living environment for his then two-year-old son.

Indeed, hypodermic syringes, tin foil packets that once contained heroin, prescription pain medication, and other drug paraphernalia littered respondent's home, and some of these dangerous items were discovered in Brody's own bedroom. Respondent-appellant subsequently pleaded guilty to delivery of less than fifty grams of a controlled substance and was sentenced to twenty-one months to thirty years' imprisonment. He was serving his sentence during the pendency and ultimate conclusion of the child protective proceedings. Consequently, at the time of trial, respondent-appellant remained incarcerated and thus did not have a suitable residence in which to return Brody. His earliest possible release date was in December 2003 provided he was granted parole.

Perhaps most telling was respondent-appellant's own testimony that he had "nothing." Respondent-appellant testified that he did not have a vehicle, a bank account, a savings account or a residence. Consequently, he was no closer to providing an acceptable living environment for Brody at the close of the termination proceedings than he was when the FIA initially became involved. We do acknowledge that, while in prison, respondent-appellant maintained a drug free existence and took advantage of rehabilitation services. However, while we do not discount respondent-appellant's efforts in this regard, we do find that the trial court properly observed that respondent-appellant did so within the strict confines of the prison environment and not necessarily of his own volition.

Additionally, we find that the evidence produced did not demonstrate that termination of respondent-appellant's parental rights was antithetical to Brody's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Accordingly, the trial court did not err in terminating respondent-appellant's parental rights, and we thus affirm the trial court's decision in every respect.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood